

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ANDRE GIBSON,

Plaintiff,

v.

CITY OF ATLANTA, KEISHA  
LANCE BOTTOMS, ATLANTA  
POLICE DEPARTMENT; ERIKA  
SHIELDS, OFFICER MARTIN, JOHN  
DOE OFFICER 1, JOHN DOE  
OFFICER, JOHN DOE OFFICER 3,  
JOHN DOE OFFICER 4, JOHN DOE  
OFFICER 5,

Defendants.

CIVIL ACTION FILE NO:  
1:22-CV-02694-VMC

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**DEFENDANTS CITY OF ATLANTA, KEISHA LANCE BOTTOMS, AND  
ERIKA SHIELDS' RESPONSE TO PLAINTIFF'S [SECOND]  
MOTION FOR EXTENSION OF TIME**

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**COME NOW DEFENDANTS CITY OF ATLANTA, KEISHA LANCE  
BOTTOMS, AND ERIKA SHIELDS** and respond to Plaintiff's [Second] Motion  
for Extension of Time, showing the Court as follows:

**I. INTRODUCTION**

These Defendants were all dismissed on February 6, 2023. (Doc. 10). In dismissing the action, this Court set deadlines for the remaining Parties (Plaintiff and an "Officer Martin") to conduct "their Rule 27(f) conference and file their Joint

Preliminary Report and Discovery Plan.” (Doc. 10., p. 24). The Court also granted Plaintiff an additional 21-day window to amend his Complaint in order to affix names to John Doe Defendants and to determine Officer Martin’s first name. *Id.* Plaintiff now moves for the second time to move those deadlines.

At the outset, these Defendants are no longer in this action and have no legal position regarding Plaintiff’s request for additional time.<sup>1</sup> That said, inaccuracies and loose language contained in Plaintiff’s Motion require clarification and correction prior to a scheduled hearing to address the posture of the case.

## **II. THE PATH TO THE ORDERED HEARING**

After the Court’s February 6, 2023 rulings, on February 23, 2023 Plaintiff began communicating with defense counsel (Phillip Friduss) for the City, Mayor, and Police Chief about setting up the Rule 27(f) conference. Neither the City, Mayor, nor Police Chief were still defendants in the case, Attorney Friduss on February 24, 2023 communicated to Plaintiff’s team advising the City defendants were no longer parties to the action and would not be participating. Over the next two weeks Plaintiff asked Attorney Friduss for Officer Martin’s contact information,

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<sup>1</sup> These Defendants have been consistent on this. They offered no objection to Plaintiff’s original Motion for Extension (Doc. 11) (despite numerous inaccuracies stated therein) and had no intention of responding to the Second Motion (despite the even more numerous inaccuracies stated therein) until the Court called for the upcoming hearing.

information he advised he did not possess.<sup>2</sup> Counsel below did not represent Defendant Martin at any time.

Plaintiff's counsel and defense counsel Friduss were able to confer on March 15, 2023. At that time, Attorney Waters again requested Attorney Friduss provide Officer Martin's contact information, to which he replied, "Zenobia, Cyara, good afternoon. All respect, no, we do not have contact information for Officer Martin, as our appearance in this case was not on his behalf. We will, however, forward your request for that information on to the Law Department." And Attorney Friduss did so.

### **III. ADDRESSING PLAINTIFF'S PROFERRED HISTORY**

In Plaintiff's attempts to describe his travails over the past month, he plays fast and loose with the history here, stirring up unwarranted inferences. To clarify the record, these Defendants chronologically address each misstep set out in Plaintiff's Motion. These responses, some minor but when taken as a whole, show that these Defendants and their counsel have acted appropriately at each stage.

- A. **Paragraph No. 6** - On September 6, 2022, Attorney Phillip Edward Friduss entered an appearance on behalf of the City of Atlanta. [Doc. 9]

**Response** – Attorney Friduss entered and appearance for the City, Mayor, and Chief of Police – as had R. David Ware (Doc. 8)

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<sup>2</sup> As discussed below, attorneys R. David Ware and Phillip Friduss entered appearances only for the City, Mayor, and Chief of Police. Prior to that entry, members of the City of Atlanta's Law Department were representing both these same Defendants, as well as entered a special appearance on behalf of Defendant Martin.

- B. **Paragraph No. 7** - On September 28, 2022, Defendant Sergeant Martin, Badge Number 5486, was served with the Complaint and Summons.

**Response** – The Docket does not so indicate.

- C. **Paragraph No. 8** - Counsel for the Plaintiff reached out to the attorneys, Joel Callins, Michael Wynter, Phillip Friduss, and David Ware, to schedule a Rule 26(f) conference; however, Plaintiff was advised by Attorney Phillip Friduss that the aforementioned attorneys only represent the City of Atlanta and therefore would not be participating in the conference due to their client's dismissal.

**Response** – Attorney Friduss has been clear to Plaintiff that he and David Ware have not and do not represent Officer Martin and have not at any point. He has been just as clear that he and Ware represent not just the City, but the Mayor and Police Chief as well. Plaintiff is correct her team was told that neither Friduss nor Ware would be participating in the conference, in that their clients were no longer parties to the action.

- D. **Paragraph No. 10** - Since filing the former request for an extension of time, counsel has continued to reach out to counsel for the City of Atlanta and the Atlanta Police Department to obtain the full name and contact information for Officer Martin. No response was given until yesterday, March 15, 2023, wherein Attorney Phillip Friduss finally advised that he did not have Officer Martin's contact information and directed our communication to Attorney R. David Ware<sup>1</sup>

**Response** – This statement is incorrect. Attorney Friduss directed Plaintiff's request for information onto the Law Department, not David Ware as he did not possess such information.

- E. **Footnote 1** – At the end of Paragraph No. 10 Plaintiff adds a footnote - Counsel has emailed and included Attorney R. David Ware in all communications concerning this matter and he has failed to respond to any of our inquiries to date.

**Response** – It is far more (if not completely more) accurate for Plaintiff to say that David Ware has been included in the communication chains in this case since entering his appearance. There was no reason for each of these Defendants’ counsel to respond to each communication as long as the communications were responded. There was no requirement nor any violation for Mr. Ware not to also tell counsel the same thing Mr. Friduss said. The purpose of this reference is unclear and unnecessary.

#### IV. CONCLUSION

These Defendants are no longer in this civil action, and express no opinion on Plaintiff’s requests other than to request that accurate representations be made to the Court.

Respectfully submitted this 30<sup>th</sup> day of March, 2023.

HALL BOOTH SMITH, P.C.

/s/ Phillip E. Friduss

R. DAVID WARE

Georgia Bar No. 737756

PHILLIP E. FRIDUSS

Georgia Bar No. 277220

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**CERTIFICATE OF SERVICE**

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I hereby certify that I have this day electronically filed the foregoing **DEFENDANTS CITY OF ATLANTA, KEISHA LANCE BOTTOMS, AND ERIKA SHIELDS' RESPONSE TO PLAINTIFF'S [SECOND] MOTION FOR EXTENSION OF TIME** with the Court using the CM/ECF System. Notice of this filing will be sent to the below as indicated on the electronic filing receipt:

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Respectfully submitted this 30<sup>th</sup> day of March, 2023.

HALL BOOTH SMITH, P.C.

/s/ Phillip E. Friduss

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